

Filed by:

Merits Panel  
Interference Trial Division  
Mail Stop Interference  
P.O. Box 1450  
Alexandria Va 22313-1450  
Tel: 571-272-4683  
Fax: 571-273-0042

Filed: September 25, 2008

UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

GARY E. WNEK AND SCOTT G. EHRENBURG,  
Junior Party  
(Patent No. 6,413,298),

v.

GREGORY M. DOBBS AND JAMES D. FREIHAUT  
Senior Party  
(Application No. 10/608,809).

Patent Interference No. 105,470 (MPT)  
(Technology Center 1700)

**Judgment – Preliminary Motions - Bd. R. 127**

Before RICHARD E. SCHAFER, MICHAEL P. TIERNEY, and  
JAMES T. MOORE, *Administrative Patent Judges*.

TIERNEY, *Administrative Patent Judge*.

The Board has entered a Decision on Motions in this interference.  
(Paper 70). Dobbs provoked the present interference with Wnek's '298  
patent by requesting that the Board declare an interference between Wnek's  
'298 patent claims and Dobbs' claims 37-59, which were specifically added  
to Dobbs' involved '809 application in order to provoke the interference.  
(See, e.g., Dobbs' Preliminary Amendment filed June 27, 2003 and Dobbs'

1 Amendment and Response filed February 22, 2005). As discussed in the  
2 Decision, all of Dobbs involved claims are unpatentable for lack of  
3 sufficient written description. Under the facts of this case, Dobbs' lack of  
4 written description under 35 U.S.C. § 112, 1<sup>st</sup> paragraph represents a  
5 threshold issue. 37 C.F.R. § 41.201. Accordingly, judgment on priority of  
6 invention is awarded against Dobbs.

7 It is:

8 **ORDERED** that judgment be entered against senior party Dobbs for  
9 Count 1, the sole count in interference. (Paper 1, p. 4).

10 **FURTHER ORDERED** that claims 37-59 of Dobbs' involved '809  
11 application be FINALLY REFUSED, 35 U.S.C. § 135(a).

12 **FURTHER ORDERED** that a copy of this judgment be entered in  
13 the administrative records of the involved Dobbs '809 application and  
14 involved Wnek '298 patent.

15

16                    /Richard E. Schafer/ )  
                     RICHARD E. SCHAFER )  
                     Administrative Patent Judge )  
   ) BOARD OF PATENT  
   )  
                     /Michael P. Tierney/ ) APPEALS AND  
                     MICHAEL P. TIERNEY )  
                     Administrative Patent Judge )  
   ) INTERFERENCES  
   )  
                     /James T. Moore / )  
                     JAMES T. MOORE )  
                     Administrative Patent Judge )

cc (via electronic filing):

Counsel for Wnek:

John T. Callahan, Esq.  
SUGHRUE MION, PLLC  
2100 Pennsylvania Avenue, N.W., Suite 800  
Washington, D.C. 20037-3202  
Tel: 202-293-7060  
Email: [jcallahan@sughrue.com](mailto:jcallahan@sughrue.com)  
Email: [sxlee@sughrue.com](mailto:sxlee@sughrue.com)

Counsel for Dobbs:

Joseph B. Milstein, Ph.D., Esq.  
WALL MARJAMA & BILINSKI LLP  
101 South Salina Street, Suite 400  
Syracuse, N.Y. 13202  
Tel: 315-425-9000  
Email: [jmilstein@wallmarjama.com](mailto:jmilstein@wallmarjama.com)

cc (via electronic filing):

Counsel for Wnek:

John T. Callahan, Esq.  
SUGHRUE MION, PLLC  
2100 Pennsylvania Avenue, N.W., Suite 800  
Washington, D.C. 20037-3202  
Tel: 202-293-7060  
Email: [jcallahan@sughrue.com](mailto:jcallahan@sughrue.com)  
Email: [sxlee@sughrue.com](mailto:sxlee@sughrue.com)

Counsel for Dobbs:

Joseph B. Milstein, Ph.D., Esq.  
WALL MARJAMA & BILINSKI LLP  
101 South Salina Street, Suite 400  
Syracuse, N.Y. 13202  
Tel: 315-425-9000  
Email: [jmilstein@wallmarjama.com](mailto:jmilstein@wallmarjama.com)

**Desperтт, Sonja**

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**From:** Desperтт, Sonja on behalf of Interference Trial Section  
**Sent:** Thursday, September 25, 2008 4:46 PM  
**To:** 'pjb@wallmarjama.com'; 'jmuldoon@wallmarjama.com'; Callahan, John T.;  
'sxlee@sughrue.com'  
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